

ORDINANCE No. 2008-03-139

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, OPTING OUT OF MIAMI-DADE COUNTY'S CONFLICT OF INTEREST AND CODE OF ETHICS ORDINANCE AS IT RELATES TO THE CONE OF SILENCE WITH RESPECT TO COMMUNICATIONS REGARDING ADVERTISED PURCHASING SOLICITATIONS; ADDING SECTION 23 TO ORDINANCE NO. 2005-10-48, THE PURCHASING ORDINANCE TO PROVIDE FOR A CONE OF SILENCE; PROVIDING FOR PENALTIES; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES AND RESOLUTIONS IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Miami Dade County Conflict of Interest and Code of Ethics Ordinance ("County Ordinance") is made applicable to the City of Miami Gardens, and

WHEREAS, Section 2-11.1(t) of the County Ordinance does not apply to any municipality in Miami-Dade County that has adopted an ordinance providing that the Code of Silence shall not apply to that municipality, and

WHEREAS, the City Council has determine that it would like to opt out of the County's Ordinance and adopt it's own Cone of Silence regulations,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. OPTING OUT: The City Council of the City of Miami Gardens hereby opts out of Section 2-11.1(t) of the Miami Dade County Conflict of Interest and Code of Ethics Ordinance.

SECTION 3. AMENDMENT: Ordinance No. 2005-10-48 is amended to add

Section 23 as follows:

Section 23: Cone of Silence.

- A. **Purpose.** A Cone of Silence shall be applicable to all RFP, RFQ, ITB, RFLI, or any other advertised solicitations for the provision of goods and services, professional services, and public works or improvements for amounts greater than \$24,999, unless otherwise exempted herein.
- B. **Definition.** "Cone of Silence" is defined to mean a prohibition on:
- (1) any communication regarding a particular RFP, RFQ, ITB, RFLI, or any other advertised solicitation between a potential Proposer, Offeror, Respondent, Bidder, lobbyist or consultant and the City's staff including, but not limited to City Manager and his staff;
 - (2) any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between a potential Proposer, Offeror, Respondent, Bidder, lobbyist, or consultant and any member of the selection/evaluation committee therefore;
 - (3) any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between a potential Proposer, Offeror, Respondent, Bidder, lobbyist, or consultant and the Mayor and City Council and their respective staff; and
 - (4) any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between the City Manager and his staff, and the Mayor and City Council and their respective staff; and
- C. **Exemptions.** Notwithstanding the foregoing, the Cone of Silence shall not apply to:
- (1) competitive processes for the award of CDBG, HOME, and SHIP Funds administered by the Community Development Department;
 - (2) communications between a potential Proposer, Offeror, Respondent, Bidder, consultant and City purchasing staff, prior to bid opening date or receipt of proposals, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;

- (3) duly noticed pre-bid/proposal conferences and site inspections;
- (4) duly noticed site visits to determine the competency of Bidders/Proposers regarding a particular solicitation during the time period between the opening of Bids/receipt of Proposals and the time the City Manager presents his written recommendation to City Council;
- (5) Emergency Procurements;
- (6) Communications with the City Attorney.
- (7) Sole Source Procurements
- (8) Those purchases that are exempted from competitive requirements in accordance with Section 15 of Ordinance No. NO. 2005-10-48
- (9) Bid waivers;
- (10) Oral presentations before selection/evaluation committees and communications occurring during duly noticed meetings of selection/evaluation committees;
- (11) Public presentations made to the City Council and communications occurring during any duly noticed public meeting;
- (12) communications in connection with the collection of industry comments or the performance of market research regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation by the Purchasing staff;
- (13) contract negotiations that occur after an award.

D. Procedure:

- (1) **Imposition.** A Cone of Silence shall be imposed upon each RFP, RFQ, RFLI, ITB or any other advertised solicitation when the solicitation is advertised in a newspaper of general circulation. At the time of imposition of the Cone of Silence, the City Manager or his designee shall issue a notice thereof to the affected department(s), the City Clerk, Mayor and City Council and shall include in any advertised solicitation a statement disclosing that the solicitation is subject to the Cone of Silence.
- (2) **Termination.** City Council awarding authority - Except as otherwise provided herein, the Cone of Silence shall terminate at the time the City Manager presents his recommendation to the City Council; provided, however, that if the City Council refers the recommendation back to the City Manager for further review, the Cone of Silence shall be reimposed until such time as the City Manager's

subsequent recommendation is presented to City Council. City Manager awarding authority – Except as otherwise provided herein, the Cone of Silence shall terminate at the time the issuing department issues a written recommendation to the City Manager; provided, however, that the City Manager refers the recommendation back for further review, the Cone of Silence shall be reinstated until such time as the City Manager issues a recommendation for award pending the bid protest period.

- E. **Penalties.** Violation of the Cone of Silence by a particular bidder or proposer shall render the award to said Bidder or Proposer voidable by the City Council. A violation of this section by a particular Bidder, Proposer, Offeror, Respondent, lobbyist or consultant shall subject said Bidder, Proposer, Offeror, Respondent, lobbyist or consultant to \$500.00 fine, per violation and debarment.

SECTION 4. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby directed to send a copy of this Ordinance to the Miami-Dade County Ethics Commission.

SECTION 5. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 6. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

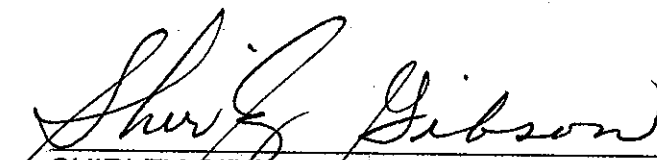
SECTION 7. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase; the

use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

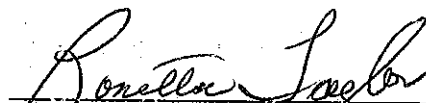
SECTION 8. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 9th DAY OF JANUARY 2008.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 23rd DAY OF JANUARY, 2008.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, CMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Vice Mayor Watson
SECONDED BY: Councilman Campbell

VOTE: 5-0

Mayor Shirley Gibson	<u> x </u> (Yes)	<u> </u> (No)
Vice Mayor Barbara Watson	<u> x </u> (Yes)	<u> </u> (No)
Councilman Melvin L. Bratton	<u> </u> (Yes)	<u> </u> (No) Out of town
Councilman Oscar Braynon, II	<u> </u> (Yes)	<u> </u> (No) Not present
Councilman Aaron Campbell	<u> x </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> x </u> (Yes)	<u> </u> (No)
Councilman André Williams	<u> x </u> (Yes)	<u> </u> (No)